

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

In re the Department of Transportation's
Request for Review under RCW
47.64.190

MEC CASE NO. 13-06

DECISION NO. 466 - MEC

DECISION AND ORDER

APPEARANCES

Rob McKenna, Attorney General, by *David Slown* and *Steve Dietrich*, Assistant Attorneys General, appearing for the Department of Transportation.

Reid, Pedersen, McCarthy and Ballew, by *Michael McCarthy*, Attorney, appearing for District No. 1, Marine Engineers' Beneficial Association.

Schwerin, Campbell and Barnard, by *Robert Lavitt*, Attorney, appearing for the Inlandboatmen's Union of the Pacific.

Garretson, Fenrich, Goldberg and Makler, by *Rhonda Fenrich*, Attorney, appearing for the International Organization of Masters, Mates and Pilots.

INTRODUCTION

The Department of Transportation seeks an order from the Marine Employees' Commission reducing wages for all its marine employees represented by unions. In issuing the decision that follows, the Commission has attempted to effectuate the public policy contained in the Public Employment Act for Marine Employees:

The legislature declares that it is the public policy of the state of Washington to:

- (1) Provide continuous operation of the Washington state ferry system at reasonable cost to the users;
- (2) efficiently provide levels of ferry service consistent with trends and forecasts of ferry usage;
- (3) promote harmonious and cooperative relationships between the ferry system and its employees by permitting ferry employees to organize and bargain collectively;
- (4) protect the citizens of this state by assuring effective and orderly operation of the ferry system in providing for their health, safety and welfare;
- (5) prohibit and prevent all strikes or work stoppages by ferry employees;
- (6) protect the rights of ferry employees with respect to employee organizations; and
- (7) promote just and fair

compensation, benefits, and working conditions for ferry system employees as compared with public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia in directly comparable but not necessarily identical positions.

RCW 47.64.006.

PROCEDURAL BACKGROUND

On November 10, 2005, the Department of Transportation delivered to the Marine Employees' Commission a letter enclosing the 2001-2003 collective bargaining agreements and interest arbitration awards for all ferry employee bargaining units saying, "[o]ur determination is that the cumulative fiscal requirements of all bargaining agreements and arbitrations orders may exceed the budgetary restrictions imposed by ESSB 6091, Chapter 313, Laws of 2005 [the 2005 through 2007 biennial budget]." Ex. MEC 16. The letters then requested the Commission initiate proceedings pursuant to RCW 47.64.190. On November 14, 2005, the Commission informed the Department that its letter was insufficient to support such a request but provided an opportunity to amend. *Id.*

On November 18, 2005 the Department provided an additional letter and chart entitled "Unplanned Obligations Attributable to Arbitration Awards and Negotiated Agreements for 2001-03 – Labor Contracts by Bargaining Unit." *Id.* Without deciding the sufficiency of the Department's additional submission, the Commission set the matter for hearing. *Id.*

The hearing in this matter was conducted by the full Commission on November 30, December 2 and December 9, 2005.¹ All parties were given full opportunity to submit evidence and argument. This is the Commission's decision and order.

¹ The Marine Employees Beneficial Association and Inlandboatmen's Union of the Pacific submitted a joint motion to dismiss on which all parties had the opportunity to submit written and oral argument. The Commission deferred its decision on that motion to this order.

FINDINGS OF FACT

Legislative History of RCW 47.64

1. According to the legislative history submitted by the parties as Exhibit MEC 18, Washington State's marine employees have had the right to bargain wages and benefits since at least 1949.² In 1981, the Washington State Legislature enacted SSB 3359 which removed from ferry system employees the right to bargain over wages and benefits. On May 20, 1981, the marine engineers employed by the ferry system engaged in a three-day walkout protesting this enactment. In March of 1983, the legislature enacted RCW 47.64 reinstating the right to bargain collectively for ferry employees, replacing the right to strike with interest arbitration and making bargaining coincident with the biennial budget cycle.

2. The legislation was intended to preserve "ultimate legislative control over budget and fare increases." Ex. MEC18 at 58, 61. The legislature accomplished this goal by providing that the biennial budget would be issued prior to the beginning of negotiation in a particular biennium. *Id.* The legislative history provides, "negotiation will commence only after adoption of the biennial budget, and the resulting agreements are for two years, *coinciding with the budget cycle.*" Ex. MEC 18, pp 2, 32, 54, 58, 61 (emphasis added)³. As the final bill report confirms, "*the stated intent is to insure that contract negotiations coincide with the budget cycle.*" Ex. MEC 18, pg. 61 (emphasis added).

The legislature substituted the right to strike with interest arbitration and, in so doing, was clear that the entire process should occur within prescribed time limits:

² The Commission requested the parties provide it with the legislative history surrounding RCW 47.64.190. The parties provided a compilation of documents which was admitted to evidence by stipulation as MEC Exhibit 18. The Commission has taken the liberty of paginating the document since it comprises in excess of 60 pages.

³ This language appears repeatedly in the legislative history including the Senate Bill Report reflecting hearings held January 19 and 20, 1983, the House Bill Report dated March 10, 1983 and the report of the passed legislation.

Should a negotiated agreement not be reached *within prescribed time limits*, mediation and fact finding services are to be provided by the Marine Employees” Commission. If mediation fails to produce an agreement on all issues, all items remaining in dispute are to be submitted to a 3-member arbitration panel for final offer item-by-item binding arbitration.

Ex. MEC 18 pg. 58 and 61(emphasis added).

Statutory Framework

Negotiations

3. To effectuate the purpose of aligning negotiations with the budget cycle, RCW 47.64 contains a framework for the timing of negotiations. RCW 47.64.170 provides “negotiation of a proposed contract by representatives of ferry system management and ferry employee organizations shall commence in each odd numbered year immediately following adoption by the Legislature and approval by the Governor of the biennial budget.” RCW 47.64.170(6) (emphasis added). Thus, the negotiations are to begin at least 30 days prior to July 1 of each odd numbered year.⁴ RCW 47.64.200 encourages the parties to agree on impasse procedures to be effective “not later than July 1st in each odd-numbered year.” If the parties are unable to agree on impasse procedures, the statute sets the framework.

4. The statutory procedures require that a mediator, if requested, be appointed by August 1 of the odd-numbered year. RCW 47.64.210. If the parties are still at impasse 14 days after the appointment of the mediator, “or beyond any other date mutually agreed to by the parties all impasse items will be submitted to arbitration pursuant to this section” RCW 47.64.240. The selected arbitrator is directed to “call a meeting within thirty days, or at such time

⁴ The Budget and Accounting Act provides “A budget for state government shall be finally adopted not later than thirty calendar days prior to the beginning of the ensuing biennium.” RCW 43.88.080. The legislature recognized that, given this short timeframe, concluding negotiation by July 1 of the odd numbered year may not be practical and so provided “the wage and benefit provisions of any collective bargaining agreement, or arbitrator’s award in lieu thereof, that is concluded after July 1st of an odd-numbered year shall be retroactive to July 1st.” RCW 47.64.170(7) The legislature expressed its preference, nonetheless, that the agreements themselves commence on July 1st of the odd numbered year and conclude on June 30 of the next odd-numbered year “to the extent practical.” *Id.*

mutually agreed to by the parties.” RCW 47.64.240(5). As to the arbitration decision, “a majority of the panel of arbitrators shall within thirty days after its first meeting select the most reasonable offer, in its judgment, of the final offers on each impasse item submitted by the parties.” RCW 47.64.240(11). Thus, the Legislature would have the negotiations and, if necessary, arbitration completed no later than mid-October of the odd-numbered year. Although the Legislature allowed some flexibility for the parties to modify this schedule by agreement, it clearly contemplated the negotiations being completed within a restricted timeframe.

MEC Wage Rollback Authority

5. The statute provides “[n]o negotiated agreement or arbitration award may become effective and in force until five calendar days after an agreement has been negotiated or an arbitration order entered for each and every ferry employee bargaining unit.” During the five day period prior to implementation, the Secretary is required by RCW 47.64.190(2) to “ascertain whether the cumulative fiscal requirements of all such agreements and arbitration orders are within the limitations imposed by RCW 47.64.180.” RCW 47.64.180 provides, that “no collective bargaining agreement or arbitrator’s award is valid or enforceable if its implementation would be inconsistent with any statutory limitation on the department of transportation’s funds, spending or budget.”

6. If the Secretary makes a finding that “budgetary or fare restrictions will be exceeded, he shall within five calendar days of completion of negotiations or arbitrations with the last bargaining unit to conclude an agreement, submit all agreements and arbitration awards to the marine employees’ commission for a binding determination whether the limitations of RCW 47.64.180 have been exceeded.” If the Commission finds that the limitations of 47.64.180 have been exceeded:

It shall order the minimum percentage reduction in straight time wage provisions applied equally across the board to all agreements or arbitration orders which will result in compliance with 47.64.180.

RCW 47.64.190(5).

7. For the first time since the enactment of this legislation, the Department here seeks a wage roll back based on the outcome of the 2001-2003 negotiations.

2001-2003 Negotiations

8. The collective bargaining agreements between the Washington State Ferries (WSF) and its seven unions were not completed within the biennium.⁵ At the close of the biennium, according to WSF Budget Director William Greene, the budget authority provided to the WSF for the 2001-2003 biennium was no longer available to fund any of the collective bargaining agreements. Tr. 63. According to Mr. Greene, all legislative funding had “lapsed” at the end of the biennium.⁶ *Id.*; see e.g. Tr. 409 At the end of the 2001-2003 biennium, WSF had \$4,222,000 which had been allocated by the legislature for labor costs but had not been spent by the WSF; this was referred to in testimony as an “under run.” Tr. 270.

9. Despite the fact that the ferry system had all of its 2001-2003 collective bargaining contracts outstanding and at least three headed for interest arbitration, the WSF did not request any additional money in the 2003-2005 budget to fund those potential awards. Nor did it make any attempt to retain any portion of the four million dollar excess to fund its

⁵ The Commission takes administrative notice that the following unions represent WSF marine employees: Ferry Agents, Supervisors and Project Administrators Association (FASPAA), Inlandboatmen’s Union of the Pacific (IBU), Marine Employees’ Beneficial Association (MEBA), International Organization of Masters, Mates and Pilots (MM&P), Metal Trades, Office and Professional Employees International Union (OPEIU) and Service Employees International Union (SEIU).

⁶ The Washington Budget and Accounting Act, RCW 43.88.140, “[a]ll appropriations shall lapse at the end of the fiscal period for which the appropriations are made to the extent that they have not been expended or lawfully obligated.”

obligations which arose during the 2001-2003 biennium but were going to be payable in a subsequent biennium.⁷

10. On October 15 and 26, 2004, Arbitrator Michael Beck presided over the interest arbitration between the OPEIU and WSF. On January 24-28 and March 21, 2005, Arbitrator Beck presided over the interest arbitration between IBU and WSF. On October 4-6, 2005, Arbitrator Michael Cavanaugh presided over the arbitration between the International Organization of Masters, Mates and Pilots (MM&P) and the WSF.

11. On February 23, 2005, Arbitrator Beck issued his decision in the OPEIU arbitration. The arbitrator awarded the union's proposal increasing the number of longevity increments payable to employees; all other proposals were rejected. Ex. WSF 32.

12. At the close of the 2003-2005 biennium, the WSF had an under run in the amount of \$6,021,000. Although, the WSF had not completed bargaining with the IBU or the MM&P, WSF implemented and funded the completed contracts for the OPEIU and Metal Trades.

13. In approximately September 2005, the WSF forwarded its budget request to the Governor for inclusion in the 2005-2007 biennial budget. Tr. 99. In that budget, the WSF made a request to fund its agreement with FASPAA. Tr. 235. It did not make any request relative to the outstanding contracts with IBU and MM&P which had been heard in arbitration but not yet decided.⁸ Tr. 124, 129, 135, 139.

⁷ In interpreting RCW 43.88.140, Mr. Greene agreed that a previous biennial allocation could be used where "we have a contractual obligation that arises during the fiscal year . . . even though the invoice comes later." (Tr. 273)

⁸ The WSF professes ignorance as to the potential outcome of those arbitrations. However, it is undisputed that the WSF knew which proposals were at issue in the arbitration and had access to the MEC's salary survey which provides comparison data for other similarly situated employees and provides guidance to the arbitrator. RCW 47.64.220 and RCW 47.64.240(8). Mr. Green testified that he did not use the salary survey in developing the budget, apart from using it to validate the request for funding of the FASPAA agreement. (Tr 199, 237) This strikes the Commission as a significant oversight and a failure to provide the legislature with the opportunity to consider all of the relevant information before making its allocation.

14. On September 7, 2005, Arbitrator Beck issued his decision in the IBU/WSF interest arbitration. In that case, the arbitrator awarded two of the union's proposals and one of WSF's. The arbitrator agreed with the union's proposal that all car-carrying vessels should contain a Boatswain (or Bos'n). Finding substantial deficits in vacation benefits as compared with other similarly situated employees, the arbitrator awarded increased vacation accrual for more senior employees. Arbitrator Beck additionally awarded the WSF's proposal to limit the use of leave without pay. Ex. WSF 32, IBU Interest Arbitration Award.

15. On November 7, 2005, Arbitrator Cavanaugh issued his decision in the MM&P/WSF interest arbitration finding, in accordance with Arbitrator Beck, that increases in vacation accrual were reasonable and should be awarded. No other proposals were granted. Ex. WSF 32, MM&P Interest Arbitration Award.⁹

16. On November 10, the Department forwarded its letter to this Commission attempting to initiate review under RCW 47.64.190.

CONCLUSIONS OF LAW

1. Was this process properly initiated by the Department of Transportation?

The Commission finds that it was not.

RCW 47.64.190(1) requires upon completion of the negotiations "the Secretary *shall* ascertain whether the cumulative fiscal requirements of all such agreements and arbitrations orders are within the limitations imposed by 47.64.180." RCW 47.64.190(3) provides that "[i]f the Secretary finds that budgetary or fare restrictions will be exceeded" he shall submit

⁹ In August, 2005, the WSF submitted a request for supplemental funding to cover the cost of the increases awarded to the OPEIU and IBU. Tr. 146. That supplemental budget request was later amended to include a request for funding of the MM&P award. Tr. 365; Ex. MEBA 28. As of the time of this hearing, the Legislature had not acted on those requests. Tr. 147.

agreements and arbitration awards to this body for a determination as to whether the budget was exceeded.

The November 10, 2005, letter from the Department purporting to initiate these proceedings said “[o]ur determination is the cumulative fiscal requirements of all bargaining agreements and arbitration orders *may* exceed the budgetary restrictions imposed by ESSB 6091, Chapter 313, Laws of 2005.” The assertion that the agreements *may* exceed the budgetary allocation is insufficient to demonstrate that the Secretary has “ascertained” that the agreements violate 47.64.180. In addition, the Department entirely failed to provide the Commission with any data to support its suggestion of the possibility of a violation. This is not merely a semantic problem. This Commission is under a tight timeline to conduct a hearing and issue a decision and, without a showing of the basis for the request, the Commission is unable to even determine if such a hearing is necessary.

For that reason, the Commission provided the Department another opportunity to comply with the statute, albeit outside the statutory timeframe. In its November 18, 2005 letter, the Department expressed its disagreement with the Commission’s finding and reasserted that the original request was sufficient. The Department indicated that it “cannot agree to waive or otherwise abrogate any statutory time requirements.” The Secretary treated the Commission’s letter as a request for additional information and provided a chart purporting to demonstrate the fiscal impact of the agreements and arbitration awards.

The Commission takes at face value the Department’s desire not to “abrogate any statutory time requirements.” Therefore, even if the second letter would have been sufficient to meet the Secretary’s obligation it was not provided within the five day time period allotted by statute. Therefore, the threshold requirement under RCW 47.64.190 has not been complied with.

Although this finding disposes of the matter, the Commission will proceed to address both the question of the propriety of a request under RCW 47.64.190 made two and one-half years after the close of the relevant biennium and the merits of the Department's contention that RCW 47.64.190 was violated.

2. Is this request for review pursuant to RCW 47.64.190 properly made two and one-half years after the close of the relevant biennium?

The Commission finds that it is not.

The legislative history, as well as the statute itself, make clear that the Legislature wanted to retain control over the total amount expended in collective bargaining at the WSF. The Legislature sought to provide the parties with the total amount available for a particular biennium and allow them to bargain as to its distribution. To accomplish this, the Legislature decided it would first issue its budget for a particular biennium and then permit bargaining for that same two-year period. As the legislative history above demonstrates, the Legislature did not intend the bargaining to start in one biennium, the interest arbitration hearing occur in the next and then the decision as to a roll-back to be made under an entirely different budget.

As described above, the statutory framework clearly envisions a process by which negotiations are completed within the biennium. Additionally, the language of RCW 47.64.180(2) requires the WSF to "in good faith exercise its administrative discretion" to implement the contracts and arbitration awards. This includes the responsibility to seek a fare increase for the purpose of implementing these contracts. In order to accomplish the request for a fare increase, the contracts and arbitration awards would need to be completed within the first year of the biennium. This is perfectly consistent with the statutory framework which suggests completion of the contracts by mid-October of the first year of the biennium.

The Commission finds that the only posture in which a request under RCW 47.64.190 can be sensibly addressed by this Commission is where the parties have completed bargaining within the statutory time period. Where, as here, the parties delay beyond the relevant biennium, allowing the employer's liability to accrue for a period of six years, a host of problems of logic and practicality arise. In this case, had the bargaining been completed in the 2001-2003 biennium, the WSF would have accrued little retroactive liability and would certainly have been able to pay the cost of the awards from its \$4,222,000 "under run."

Instead, the parties headed into the 2003-2005 biennium without accounting for that potential liability in any way. The four million dollars was no longer available and the Legislature had no idea that WSF was accruing potential retroactive liability. The WSF did not attempt to hold back a reserve to cover these costs because it did not believe that it was free to do that under the budget and accounting act.¹⁰ Nor did the WSF make a request for additional funds in the 2003-2005 biennium. The obligation continued to grow. At the end of the 2003-2005 biennium, the WSF turned back a six million dollar "under run." Again, this was certainly enough to cover the liability as it had accrued up to that point. Yet, the agreements were still not completed.

Now, in the middle of the 2005-2007, the WSF's liability has grown over this six-year period and presents a problem. However, it is a problem generated by delay not the absence of funding.

In the meantime, the WSF decided to implement the OPEIU, Metal Trades and FASPAA agreements. This, of course, breached the mandate of 47.64.190 which requires that "no

¹⁰ RCW 43.88.140 provides that the appropriations lapse at the end of the biennium "to the extent that they have not been expended or lawfully obligated." Given the mandate of RCW 47.64. 170 that agreements are retroactive to the beginning of the biennium, it is not unreasonable to conclude that the funds ultimately agreed to or awarded were "lawfully obligated" during the relevant biennium.

negotiated agreement or arbitration order may become effective and in force until five calendar days after an agreement has been negotiated or an arbitration award entered for each and every ferry employee bargaining unit.” For the purpose of this proceeding, it makes a potential wage rollback untenable; either some employees would be required to return wage increases in effect for a year or disadvantage the remaining groups. *See* RCW 47.64.190(5) (wage rollbacks must be “applied equally across the board to all agreements or arbitration orders . . .”)

In view of all of these circumstances, in particular the fact that the relevant biennium concluded two and one-half years ago, the Commission finds that a request for a wage rollback is not properly made.

Nonetheless, the Commission will consider the merits of WSF’s request.

3. Did the Department meet its statutory mandate to make a good faith effort to implement the terms of the 2001-2003 agreements?

The Commission finds that the Department did not.

RCW 47.64.180 provides as follows:

The Department of Transportation shall, in good faith, exercise its administrative discretion with full public participation as required by RCW 47.60.330, subject only to legislative limitations and conditions to implement the terms of any collective bargaining agreement or arbitrator’s award.

The Commission finds that this section requires the Department, as represented by the WSF, to make a good faith effort to implement the arbitration awards at issue. Beyond requesting a fare increase, which we will discuss below, the WSF must do every thing in its power to see that agreements and awards are funded. This includes, if the WSF finds itself beyond the relevant biennium, making a good faith estimate of potential labor costs and requesting those funds from the Legislature. Making a request that reflects the WSF’s position in negotiations or interest arbitration is not adequate to meet this obligation. This is particularly true where, as here, the

MEC's own statutorily mandated salary survey shows certain represented employees significantly lagging behind the comparator employees in salary and benefits.

RCW 47.64.180, above, specifically references the process for requesting fare increases as a manner in which the WSF may exercise its administrative discretion and limits the amount of the increase which may be used to pay for labor costs to "the amount that the Seattle consumer price index increased after the previous toll increase." RCW 47.64.180(2). Here, the WSF sought and received a six percent fare increase in 2006. Tr. 357. However, it did not designate any portion of that amount toward funding the agreements or awards at issue in this case. Tr. 311, 355:22-356:8, 358:4-7.

For these reasons, the Commission finds that the Department failed to comply with the requirements of RCW 47.64.180.

4. Did the WSF meet its burden of demonstrating that the cumulative effect of the 2001-2003 collective bargaining agreements and awards are inconsistent with the statutory authorization?

The Commission finds that WSF did not.

The Commission finds that the burden to prove that the implementation of the 2001-2003 collective bargaining agreement "would be inconsistent with any statutory limitation on the department of transportation's funds, spending" rests with the Department.¹¹ The Department must show (1) the funds statutorily available for the purpose of complying with these agreements

¹¹. For the purpose of this part of the decision, the Commission will accept the Department's contention that the relevant statute is ESSB 6091 – the 2005-2007 biennial budget. However, as described above, the Commission believes the appropriate budget to consider would have been the 2001-2003 budget had the process been properly followed. At hearing and in its brief, the Department seems to contend that other statutory limitations affect the outcome of this case. The Commission will rely on the scope of review as defined in the Department's November 10 letter in which he says "[o]ur determination is that the cumulative fiscal requirements of all bargaining agreements and arbitration order may exceed **the budgetary restrictions imposed by ESSB 6091, Chapter 313, Laws 2005.**" The Department cited no other statute.

and awards, (2) the cost of the agreements and awards and (3) that the costs exceed the funds available.

A. Funds Available

(1) Under Runs/Reserve

As to funds available, the Department did not take into account several sources of funds statutorily available. First, it did not take into account its anticipated under run for 2005-2007, variously referred to as an “under run” and a “reserve.” Mr. Green and WSF Executive Director Mike Anderson both testified credibly as to the prudence of maintaining a reserve to account for unexpected occurrences. Tr. 98, 176. However, neither could point to, nor can the Commission discern any statutory requirement for such a reserve. *See* Tr. 181. Additionally, there is no line item anywhere in WSF’s budgeting documents which identifies such a reserve amount. Tr. 293. While the Commission is sympathetic with the WSF’s desire to maintain such a reserve, the necessity to use it in this circumstance is created not by improvidently granted arbitration decisions but by the length of time during which retroactive liability was allowed to accrue.

The Department contends that the total overage caused by the agreements and awards will be \$6,233,000. Ex. WSF 7. Mr. Greene testified that the 2005-2007 under run is currently running at “about four percent through October.” Tr. 294. The gross dollar amount of that under run, if it were to continue through the 2005-2007 budget would be “8.8 million.” *Id.* This would be more than sufficient to cover the liability as calculated by the Department. The prior years’ under runs ranged between two and three percent of the budget or, according to Mr. Greene applying those percentages to the 2005-2007 budget, the under run would be between \$4,400,000 and \$6,600,000. Tr. 294-295.

(2) Labor Proviso

The statutory language contained in ESSB 6091, Sec. 226(2) has been referred to in this hearing as the “labor proviso.” It provides, in relevant part, as follows:

The expenditure for compensation paid to ferry employees during the 2005-2007 biennium may not exceed \$222,356,000, *plus* . . . a dollar amount prescribed by the office of financial management for salary increases during the 2005-2007 biennium.

Ex. WSF 19, p. 25(emphasis added). Effective in 2006, the legislature granted a salary increase of 3.2 percent for all state workers. According to Mr. Greene, the dollar amount prescribed by the Office of Financial Management for that increase for ferry workers was 6.147 million dollars. Tr. 251. Mr. Greene further testified that the Department did not add that amount to the \$222 million allocated but, rather, included that increase within the cap. Tr. 244. The Commission believes this is inconsistent with the statute. According to Webster’s New World Dictionary, the word “plus” means “in addition to.” Thus, the costs of the wage increase were allocated in addition to the 222 million dollars. The Department did not take this into account in concluding that the cap had been exceeded.¹²

(3) Fare Increases.

As discussed above, RCW 47.64.180 requires the Department to “in good faith exercise its administrative discretion” to implement the terms of its collective bargaining agreements. This includes, explicitly, initiating the process for requesting fare increases. The statute provides that “[t]he [transportation] commission or the department may increase tolls after the first fiscal

¹² The proviso also adds “a dollar amount, as prescribed by the office of financial management, that is equal to any insurance benefit increase granted general government employees in excess of \$584.58 per month annualized per eligible marine employee multiplied by the number of eligible marine employees for fiscal year 2006 and \$584.58 a month annualized per eligible marine employee multiplied by the number of eligible marine employees for fiscal year 2007, a dollar amount as prescribed by the office of financial management for costs associated with pension amortization charges . . .” The Commission was provided no information as to how much money these represent and whether or not the Department added these amounts to the total “labor cap.”

year of the biennium by the amount that the Seattle consumer price index increased after the previous toll increase.” In 2006, the tariff committee approved a six percent increase in ferry fares based upon, among other things, collective bargaining changes. Tr. 357. That six percent represents about five million dollars per year, according to Mr. Greene. *Id.* The Seattle consumer price index for 2004-2005 was 3.4 percent. Ex. MEBA 34. Mr. Green testified that a three percent increase in fares would generate between \$2 million and \$3 million. That increase may be allocated to pay for labor costs.

Among these categories, the WSF has not demonstrated that it lacked the funding to pay for these agreements and awards.

B. Costs of Agreements and Awards

The lion’s share – \$5,344,000 – of the overage alleged by the Department is attributable to increases in vacation accrual. Specifically, the bulk of the vacation liability is retroactive accrual over the approximately six years since the effective date of the collective bargaining agreements. The calculation of that accrual assumes that every employee will use every hour of retroactively accrued vacation leave during the remainder of the 2005-2007 biennium. *See* Ex. WSF 8-12; Tr. 417. There is no dispute that an employee is not required to use every hour of accrued vacation; to the contrary the employee may “bank” vacation from year to year. Furthermore, the WSF has the ability to deny vacation request made by employees. No information was presented to the Commission as to usage rates or estimates of usage for the rest of the biennium.

ESSB 6091’s labor proviso speaks in terms of expenditures providing “[t]he *expenditure* for compensation . . . may not exceed” Although the rules of accounting require budgeting

for a liability like accrued leave, the expenditure may differ from the budgeted amount. Mr. Greene acknowledged as much:

Q. Do you carry vacation accrued but unused as a liability on the books?

A. Yes.

Q. Okay. So in terms of what you actually spend in a biennium you may or may not spend that liability that you're carrying . . . ?

A. Yes, that's the right way to understand it.

Tr. 418. Thus, the Department has failed to demonstrate that the expenditure (as opposed to the liability) would exceed the cap.¹³ Thus, the Department did not meet its burden of demonstrating that the implementation of the 2001-2003 collective bargaining agreements “would be inconsistent with any statutory limitation on the department of transportation’s funds, spending”

ORDER

For these reasons, the Commission Orders that the request for review initiated by the Department of Transportation be dismissed.

The Commission is mindful of the difficult budgeting situation in which the WSF finds itself in the wake of Initiative 695 and other economic factors like fuel increases. It is the Commission’s view that these external challenges are best addressed when labor and management work together. Viewing the negotiation process where one party’s gain is the other’s loss can only make situations like the one in which the parties find themselves here more prevalent. The Commission stands ready to devote its resources and time to assisting the parties mend and strengthen their relationship so that this situation does not recur.

¹³ Additionally, in making the calculation of the cost of the vacation accrual, Mr. Green relied heavily on “weighted rates” for each position. These are rates intended to reflect the full cost of an hour of employment of a particular kind of employee. However, Mr. Green did not develop the weighted rates, nor could he explain how the numbers were developed.

RECONSIDERATION

Pursuant to the provisions of RCW 34.05.470, any party may file a petition for reconsideration with the Commission within ten days from the date this final order is mailed. Any petition for reconsideration must state the specific grounds for the relief requested. Petitions that merely restate the party's previous arguments are discouraged. A petition for reconsideration does not stay the effectiveness of the Commission's order. If no action is taken by the Commission on the petition for reconsideration within twenty days from the date the petition is filed, the petition is deemed to be denied, without further notice by the commission. A petition for reconsideration is not a prerequisite for seeking judicial review.

So ORDERED, this 29th day of December 2005.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN SWANSON, Chairman

/s/ JOHN SULLIVAN, Commissioner

/s/ ELIZABETH FORD, Commissioner